IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 515 OF 2003.

Shri Vishnu Babusso Naik,
major, married, Agriculturist,
resident of Nagzar, Curti,
Ponda, Goa. ... Petitioner.

VERSUS

1. Shri Rauji Yesso Naik,
(since deceased, represented
through his legal heirs):
1a) Shri Yesso Rauji Naik.
1b) Smt. Saraswati Yesso Naik.
1c) Krishna Rauji Naik.
1d) Smt. Rekha K. Naik.
1e) Shridhar Rauji Naik.
1f) Jayant Rauji Naik.
1g) Miss Shashikala Rauji Naik.
All residents of Nagzar, Curti,
Ponda, Goa.

1h) Shri Mahadeo Vithu Naik.
1i) Smt. Rati Mahadeo Naik,
both residents of Apeval,
Priol, Ponda, Goa.

1j) Vassant Raghu Borker.
1k) Smt. Mangala Vassant Borker.
Both residents of New Vaddem,
Vasco-da-Gama.

2. Shri Shridhar Rauji Naik.

3. Shri Krishna Rauji Naik.

4. Shri Jayant Rauji Naik.

5. Shri Yesso Rauji Naik.

6. Shri Ramnath Vassu Naik.

7. Shri Somnath Ramnath Naik,
All residents of Nagzar,
Curti, Ponda, Goa. ... Respondents.

Mr. S. D. Padiyar, Advocate for the Petitioner.

Mr. N.K. Sawaikar, Advocate for the Respondents.

CORAM: A.M. KHANWILKAR, J.

DATE: 20TH NOVEMBER, 2003.

ORAL JUDGMENT:

Heard both sides.

2. Rule. Rule made returnable forthwith by consent. Mr. Sawaikar waives notice for all the respondents.

3. This petition under Article 227 takes exception to the Judgment and Order passed by the Civil Judge, Junior Division, Ponda, Goa, dated 22nd September, 2003 dismissing the application preferred by the Petitioner for adjournment on the ground that the Petitioner's Attorney was unable to remain present in Court.

4. The Court below has rejected the application firstly on the ground that it was not open to the Court to grant fourth adjournment and secondly because no case whatsoever was set out in the application as filed relating to the inability of the plaintiff's Attorney to remain present in Court. Insofar as the first ground is concerned, that aspect is squarely answered in favour of the petitioner in the unreported decision of this Court in Writ Petition No.294/2003 decided on August 7, 2003 in Vishwas Yeshwant Vaingankar and another v. Helena Mascrenhas e Souza Ticlo and another. Insofar as the second ground which weighed

with the Court below is concerned, pursuant to liberty granted by this Court, the petitioner has filed affidavit of his Power of Attorney as well as his personal affidavit setting out detailed reasons which prevented the Power of Attorney of the Petitioner to remain present in Court. The Petitioner has also explained his inability to remain present in Court. The averments made in those affidavits have remained uncontroverted. It necessarily follows that the cause as made out in the said affidavits deserve to be accepted as sufficient cause. Besides it is seen that before the Court below the respondents have clearly conceded that they have no objection for granting adjournment as prayed by the petitioner. Even for that reason the application for adjournment ought to have been allowed by the Court below.

5. In the circumstances, this petition succeeds. The impugned Judgment and Order is set aside and instead the application as filed by the petitioner (Exh.43) is allowed "on condition" that the petitioner pays costs of this proceeding to the respondents, quantified at Rs.5000/- within two weeks from today. It is made clear that the Trial Court shall proceed with the Suit in accordance with law and ensure that no unnecessary adjournments are granted at the instance of the petitioner hereafter.

6. Petition allowed in the above terms.

A.M. KHANWILKAR, J.

sl.